

1
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF OREGON

4 THE HON. ANN L. AIKEN, JUDGE PRESIDING

5
6 UNITED STATES OF AMERICA,)

7 Plaintiff,)

8 vs.)

) No. 6:06-cr-60011-AA

9 JOSEPH DIBEE,)

10 Defendant.)
11 _____)12
13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 FRIDAY, DECEMBER 13, 2019

16 PORTLAND, OREGON
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2122 Jan R. Duiven
23 Official Federal Reporter
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Also present:

Officer Noe Rios

1 FRIDAY, DECEMBER 13, 2019; 3:27 P.M.

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3
4 COURTROOM DEPUTY: Now is the time
5 set for criminal case No. 06-60011, United States
6 of America versus Joseph Dibee for oral argument.

7 THE COURT: Good afternoon. If I
8 could ask you to introduce yourselves for the
9 record, I'd appreciate it.

10 MR. BARROW: Geoff Barrow on behalf
11 of the United States.

12 MR. HOOD: Paul Hood for Joseph
13 Dibee, your Honor.

14 THE COURT: Okay. Proceed, counsel.
15 I have your memos. I have everything filed. I'm
16 happy to hear anything you wish to add.

17 MR. BARROW: Your Honor, we move for
18 the continued detention of Mr. Dibee pending trial
19 for all of the reasons set forth in our opposition
20 to the defendant's release memorandum. I would
21 note that that recommendation is consistent with
22 that of Pretrial Services, which we didn't have at
23 the time of our filing. I'd be happy to answer
24 any questions, but the basis for the detention is
25 set forth in the memorandum.

1 MR. HOOD: Your Honor, I'll address
2 the issues of danger to the community and flight
3 risk. Before I do that, I would like to turn to
4 the gallery and note that Mr. Dibee has a number
5 of family and friends here present in the
6 courtroom today. If you are family or friend of
7 Joseph Dibee, please stand.

8 Now, all of you but the two that are
9 right here -- so I'm going to get out of the way
10 so you can see -- all of you but these two please
11 be seated.

12 Your Honor, this is Maha Coles and
13 Jeff Coles. They are respectively the sister and
14 brother-in-law of my client. Jeff Coles has been
15 married to Maha for now 22 years, but actually
16 knew my client before he knew Maha, and met his
17 future wife through my client. They both provided
18 letters to the Court. They --

19 THE COURT: Yes.

20 MR. HOOD: -- fully support
21 Mr. Dibee and would be his home plan if he were
22 granted pretrial release.

23 I'd also just say, briefly,
24 Ms. Coles has been a doctor for 20 years.
25 Mr. Coles has been an engineer for about the same

1 amount of time, 25 years, I guess, actually. They
2 have strong connections to the Seattle community
3 where they reside and, again, they would be his
4 home plan.

5 You can sit back down.

6 THE COURT: Thank you. Thank you
7 for being here.

8 MR. HOOD: Your Honor, I will make
9 my comments relatively brief. I've already
10 provided the Court with a second exhibit which
11 goes through the sentences and is organized by
12 counts. I've called that Defendant's Exhibit 2.
13 Do you have that document, your Honor?

14 THE COURT: I have.

15 MR. HOOD: So the government's
16 argument is something that I would characterize as
17 essentially a genre argument. In other words,
18 they're describing a kind of crime which is a
19 genre that should not allow for pretrial release,
20 at least as a presumption against it. A careful
21 reader, a studious reader, could review their
22 government memo and not realize that 11 defendants
23 in this case have already resolved their cases.
24 You very well know that, and four of those
25 defendants were granted pretrial release in spite

1 of every argument the government's made. Those
2 four defendants who were granted pretrial release
3 were all also charged with Count 1, the conspiracy
4 count.

5 That genre argument that they're
6 making, in other words, does not look into the
7 actual data that we have represented to the Court
8 in Exhibit 2. It doesn't get into the specifics
9 of the actual outcomes of this case.

10 A reader of their memo could think
11 everyone in the case must have gotten at least a
12 ten-year sentence, and in fact that's not the
13 reality of what happened. There -- those numbers
14 on Exhibit 2 that talk about the different counts,
15 how many counts people had and what their sentence
16 ultimately was aren't just bare-bones numbers, and
17 you know this very well. They represent
18 thoughtful investigation, they represent
19 presentations to the Court, and they represent
20 thoughtful outcomes for those defendants.

21 What that pattern shows is stark and
22 it's very significant for the issue here. You
23 have a collection of defendants, all of whom had
24 four or fewer charges against them in the second
25 superseding indictment, and then you have another

1 group of defendants who had a lot more charges
2 than that. The least of them had at least 17
3 charges against them. There's no middle ground.
4 It's two to four charges against them or 17 to 59
5 out of 65.

6 The reason why that's so significant
7 is that the way the indictment is written, you
8 have Count 1, conspiracy, with overt acts,
9 Count 2, another conspiracy, and then Counts 3
10 through 65 each reflects the various overt acts of
11 Count 1. The more charges against a person, the
12 more active they were, the more involvement they
13 had, and, logically, most likely, the heavier
14 sentence they got.

15 Joseph Dibee is firmly planted in
16 that first group of the people with two to four
17 counts. He has three counts against him. And one
18 of those, and I'm just going to say this quite
19 bluntly, is a bogus count. I brought this up to
20 the government. I addressed it in my memo. There
21 is no rationale why he is charged in Count 2,
22 which is the conspiracy to destroy the energy
23 facility. That is written as a conspiracy count.
24 It probably ought to have been written simply as
25 like one of the other nonconspiracy counts in the

1 case, just another overt act.

2 I've reviewed discovery on this
3 issue. I've talked to Geoffrey Barrow -- pardon
4 me, Mr. Barrow about this issue. There's no
5 explanation for why he's included in this count,
6 which means that you really just have two counts
7 against him.

8 Also, your Honor, look at the gap
9 between Count 1 -- or, pardon me, group one in
10 that exhibit and group two. It's this huge gap.
11 The most charges -- Rebecca Rubin has four. Then
12 you jump all the way up to Suzanne Savoie, who has
13 17 charges against her. There's no rationale in
14 this case, and I say so explicitly in my memo to
15 the Court, why Mr. Dibee would leap out of the
16 first group and into the second.

17 And all of that sentencing
18 discussion matters, your Honor, because in this
19 district, and I suspect in most districts, someone
20 facing a sentence around 41 months or 60 months or
21 something like that, someone who already has about
22 16 months in on that sentence would often get
23 pretrial release.

24 The government's memo goes on and on
25 about danger as a kind of genre, but the specifics

1 of what we see in the case suggest that pretrial
2 release would be appropriate. Additionally, you
3 have a significant period of time where no new
4 criminal allegation is alleged.

5 Now, the government's point is,
6 well, part of that time he's outside the United
7 States. Okay. Fair enough. But what about 2002,
8 2003, 2004, and 2005? The last allegation against
9 Joseph Dibee is from October of 2001. Then there
10 is an end to any allegation of criminal conduct
11 and the government has no explanation for that.
12 But we do, your Honor, and that is referenced in
13 the memo.

14 Mr. Dibee changed his view, his
15 philosophy, which is now that if you want to help
16 the natural world, what you've got to do is get
17 the profit motive and good environmental practice
18 to line up so that people's desire to make money
19 fits with a good environmental practices approach.

20 All of that suggests that he is
21 not -- he does not represent a danger to the
22 community, and certainly if you look again at
23 Exhibit 2, you have four people on that exhibit,
24 your Honor, who received pretrial release:
25 Jonathan Paul had three counts against him,

1 received pretrial release; Kendall Tankersley had
2 four counts, also received pretrial release;
3 Suzanne Savoie had 17 counts against her in the
4 second superseding indictment, received pretrial
5 release; and Daniel McGowan had 18 counts against
6 him and received pretrial release. If it's a
7 danger to the community argument that the
8 government is trying to rely upon, it just -- it
9 doesn't work.

10 Instead, their argument has to be
11 flight, and now I'm going to turn to that
12 argument. It's spelled out in my memo, your
13 Honor, that at the time -- and, again, these
14 allegations are treated as true for the purposes
15 of this discussion -- Mr. Dibee had no pending
16 case against him. Nothing had yet been filed.

17 I've talked to AUSA Barrow about
18 this and the best explanation that we can come up
19 with, at least the one that makes the most sense
20 to me, frankly, is that an FBI agent approached
21 Mr. Dibee hoping he could turn Mr. Dibee, hoping
22 he could flip him, and tried to intimidate him and
23 frighten him, and, frankly, there's probably a
24 degree of embarrassment for that FBI agent that
25 that didn't work out as planned.

1 And, unfortunately, I think there's
2 a bit of aggressiveness against Mr. Dibee
3 percolating up through the system at some levels
4 because of that, because it's an embarrassment for
5 that FBI agent, because he tried and it didn't
6 work out at all.

7 But there's no failure to appear.
8 There's no absconding. Nothing of the sort. And,
9 instead, while -- during that time period from
10 2005 to 2018, Mr. Dibee is engaged in a variety of
11 good works that are all spelled out for the Court
12 in the defendant's memorandum in support of
13 pretrial release.

14 In addition, your Honor -- yes. He
15 just whispered something to me that is a small
16 detail but if -- I think it's significant, though
17 a small detail. He paid his taxes that he still
18 owed while he was outside the United States. I
19 mean, aside from count -- I mean, the limited --
20 the limited participation, just the two counts,
21 there's a whole history with him of good works, of
22 good participation in society, of doing things
23 like paying his taxes, all of that which all
24 supports a notion of granting him pretrial
25 release.

1 In addition, you know, he had
2 this -- I mean, all of this weighs in on a
3 question of post-offense rehabilitation. It also
4 weighs in on a question of whether or not he would
5 be a good performer if granted pretrial release.

6 Now, I recognize that Officer Rios
7 is recommending detention, but there are a couple
8 of details that ought to be considered when you
9 look into that, and I've mentioned some of these
10 in the memo as well.

11 First, he has -- he has no travel
12 documents that would allow him to travel outside
13 the United States. Those documents were returned
14 to me as part of Mr. Dibee's property and I gave
15 them on to Ms. Coles, but we would gladly
16 surrender them. The Syrian passport is expired.
17 The Russian identification documents are simply
18 residence documents. They would do nothing for
19 him in terms of travel. They wouldn't be
20 effective.

21 And, of course, the Court has the
22 option of putting him on house arrest or other
23 forms of monitoring. There are options available
24 to the Court short of detention that would be
25 quite effective for him. So you don't have to

1 follow -- follow that recommendation and the
2 recommendation doesn't acknowledge the fact that
3 he doesn't have much of an ability to travel. It
4 simply relies on the fact that he has foreign
5 connections.

6 But we all should know he was born
7 in Seattle. He was born in Washington state.
8 He's a citizen of the United States. Though he
9 does have foreign ties, he has domestic ties as
10 well. And he has an extraordinarily good home
11 plan if permitted to take advantage of that.

12 There are two other points that I
13 will make briefly, your Honor. One is -- and I've
14 worked with -- and against, I should say. I've
15 worked against Mr. Barrow before in previous
16 cases. I have a good working relationship with
17 him. But there's something in the government's
18 memo that I don't want to let go of and it's in
19 the very first paragraph and it's repeated later
20 in the motion. And it's when it's referenced that
21 Mr. Dibee was traveling under a Syrian passport in
22 a different name.

23 Now, I would like to assume the best
24 and be optimistic about this, but whether I'm
25 assuming the best or the worst, I'm not going to

1 leave that unrebutted. The Syrian passport is in
2 the name Yusef Diba (phonetic) which is simply the
3 Arab Syrian version of Joseph Dibee. It would be
4 no different than if I had ancestors from Italy
5 and I moved to Italy, and instead of going by
6 Paul, my first name, I went by Paulo. It is no
7 different.

8 I've spoken to Ms. Coles about this.
9 She agrees. This is simply the Arab version of my
10 client's name. It is not an alias. It is nothing
11 nefarious.

12 And the thing that bothers me about
13 this, and I just -- I've thought carefully about
14 my words and I want to be diplomatic, but my
15 opinion is that AUSA Barrow must have known that.
16 It must have -- he's intelligent. He's
17 insightful. He must have realized that Yusef and
18 Joseph are awfully close, and Dibee and Diba, I
19 may be mispronouncing that, those names are very
20 close just as you look at them on the page.

21 The government has pointed to that
22 like it's something that can sway you. It's kind
23 of like a one-line throwaway, and it shouldn't be
24 used in that way.

25 I would point out, secondly, your

1 Honor, I want to zero back in on Exhibit 2 for a
2 moment. You have Jonathan Paul who has three
3 counts against him, which is exactly the same
4 number of counts that Mr. Dibee had against -- has
5 against him. Jonathan Paul got a sentence of
6 41 months in this case. He was granted pretrial
7 release. And it's not just the three counts.
8 It's the same counts. It's Counts 1, 2, and 6.
9 And Count 2 was just as bogus against Jonathan
10 Paul as it is bogus against Mr. Dibee.

11 Jonathan Paul was granted pretrial
12 release and the government gave Jonathan Paul a
13 17-level downward departure. I don't know what he
14 ultimately got, but that was their recommendation
15 out of the government's own sentencing memorandum.
16 I don't know the details of that cooperation. I
17 don't know the details of that assistance. But I
18 believe it probably related to those serious
19 crimes, crimes that involved destruction of
20 property.

21 (Off-the-record discussion.)

22 Whatever the level -- whatever the
23 level of cooperation or noncooperation here, in my
24 memo to the Court, we detailed the risks that
25 Mr. Dibee has taken, risks involving very serious

1 issues, I suspect much more serious than anything
2 Jonathan Paul dealt with, and the risks to
3 Mr. Dibee -- again, and I think the Court can
4 imagine them, much more serious than anything
5 Jonathan Paul faced.

6 And I can't imagine that the
7 government's position is that Jonathan Paul,
8 helping with serious, but ultimately
9 property-related -- property destruction, sabotage
10 kind of offenses, would ever justify something
11 more than the consideration that Mr. Dibee should
12 receive, your Honor.

13 And with that, I just want to say my
14 client has also prepared brief remarks and would
15 like to present those to the Court, your Honor.

16 THE COURT: Happy to hear anything
17 you wish to tell me.

18 THE DEFENDANT: Well, your Honor --

19 THE COURT: You're going to need to
20 speak loudly into the microphone. I apologize.
21 The courtroom has some dead spots and the court
22 reporter will need to be able to take down what
23 you have to say.

24 THE DEFENDANT: I've taken the
25 opportunity to read the memo and I'd like to take

1 this opportunity to counter any of the gross
2 misrepresentations, mischaracterizations of me put
3 forth by the prosecution as I stand here before
4 this Court.

5 First of all, I want to say that the
6 charges are literally three lifetimes ago.

7 THE COURT: The charges -- say that
8 again.

9 THE DEFENDANT: The charges leveled
10 against me are from three lifetimes ago. You
11 know, there are three different countries.
12 They're three different languages. They're three
13 different cultures ago. And, you know, as time
14 goes by, people develop. They develop
15 intellectually, they develop socially, they change
16 their persona for the better, I should hope. And
17 I can't say that I'm the same person today that I
18 was a year ago. I -- certainly not two decades
19 ago.

20 I don't understand how these claims
21 can be made after 20 years that I'm this person
22 when, you know, literally people change --
23 hopefully change for the better over time and, you
24 know, that was 20 years ago.

25 You know, as we grow, we incorporate

1 the things that work into our -- our life and we
2 learn from our mistakes, and for many years, even
3 before I was indicted, I felt that direct action
4 and protests and such don't really work, and they
5 don't work because there's money behind them.
6 There's money behind the actions being protested.

7 So it seemed to me that the best way
8 to effect change, positive change, was to make
9 good environmental practices, good financial
10 practices, and that's what I've tried to do for
11 the last 15 years of my life. I point out that
12 many people do that in different ways. I'm an
13 engineer by training and sort of a computer person
14 by whatever necessity. So the types of changes
15 that I've tried to implement are ones that go
16 along with the skill sets that I have which are
17 technological.

18 I'd like to describe a couple of
19 projects that I've worked on over the last
20 15 years, you know, which I think embody the
21 principles that I believe in and certainly
22 contradict what's -- what's written in this memo
23 here.

24 The first project I'd like to
25 describe is the Syrian solar thermal project which

1 I designed and authored. It was a sort of
2 outgrowth of my work at the university where I
3 taught. Originally, when I got into Syria, the
4 government made me an offer. The offer was: Do
5 you want to help your country and your family? Of
6 course there was a right answer, wrong answer.
7 Thankfully, I got the right answer.

8 So I took this job at the university
9 teaching computer science and eventually I
10 branched out into environmental and renewable
11 energy systems. Originally the government wanted
12 us to study wind turbines because they're
13 relatively cheap. They make cheap power. But as
14 time progressed, I was able to persuade them to
15 look at solar energy.

16 Now, solar thermal is quite
17 different than what most people associate with --
18 with solar power. Basically what you do is you
19 concentrate heat from the -- from the energy of
20 the sun onto a line or a -- or a pipe and then in
21 the pipe you flow a heat exchange medium which is
22 then turned around and boils water or, you know,
23 organic solvent and, in turn, turns a turbine.

24 The project was slated to produce
25 35 percent of the entire energy of the entire

1 country. And as a byproduct of that, we
2 desalinate water. Syria is a very dry country.
3 The water comes once every three days. And so
4 having a good source of clean drinking water is
5 super important. For every one megawatt of power
6 that the power plant would produce, it would
7 produce 5 million gallons a day. The power plant
8 eventually was slated to become 600 megawatts in
9 size. We had gotten to the point where we had a
10 prototype, but the war started before we could
11 produce a pilot project.

12 Seven million people would have
13 been -- would have received power from this plant,
14 and as well as jobs. And the impetus behind the
15 project was the Syrian government wanted to join
16 the EU and that was their sort of forefront or
17 thrust into EU. Part of the rationale was -- is
18 that in order to join the EU, they needed to
19 acknowledge and abide by the Kyoto Affair, Kyoto
20 Protocols, which were global warming, greenhouse
21 gas control thing, and as well as abolish the
22 death penalty and acknowledge the existence of
23 Israel.

24 My job in all that was to bring some
25 renewable energy systems into the country that --

1 that could accomplish that. And I believe that
2 had -- had I not been caught up in the war, had I
3 not been forced to flee like one out of every --
4 one out of every five people who are refugees,
5 excuse me, I think that the project would have
6 been very successful and helped a lot of people.

7 I think it also demonstrates the
8 basis which I referred to earlier in that good
9 environmental policy comes from good economic
10 policy. The project as a whole would have
11 produced electricity at a rate slightly higher
12 than burning coal. Syria, at the time, was
13 burning natural gas and so they would have
14 experienced a substantial savings financially, in
15 addition to doing the right thing environmentally.

16 So it goes toward that philosophy
17 that I have and the belief that I have.
18 Unfortunately, it was curtailed by the war.

19 I'd like to also talk about my work
20 in Ecuador. While I was living in Russia, I ended
21 up working -- going on a kayaking trip with the
22 intent of finding work in Ecuador. There are a
23 variety of reasons why -- why I did that. Russia
24 was very difficult to find work. My wife and I
25 wanted to have a child and it just -- we didn't

1 have enough sources of income within Russia to do
2 that responsibly. Russia imports a lot of
3 materials so things that are very inexpensive,
4 like computers and shoes and clothes and whatever
5 in the United States are actually very expensive.
6 In Russia, they have an import duty of 42 percent.
7 So I needed to find some other source of income
8 outside of Russia and I thought to go to Ecuador
9 to do that.

10 While I was there, I met a friend of
11 a friend of a friend who's Douglas MacKinnon, and
12 he is essentially like the Bill Gates of mining in
13 South America. And he -- we were talking and
14 talking and he said, "Well, I'm a miner." And I
15 thought, Well, aren't there a lot of environmental
16 problems associated with that? And he said,
17 "Well, yes, of course."

18 You know, and we have these
19 problems, like I work with a number of different
20 people, including indigenous people in the Amazon
21 rain forest, and they're what we call artisanal or
22 hobby miners, and essentially there are
23 small-scale families, very poor families, people
24 who really haven't been exposed to western culture
25 up until about 30 years ago, 35 years ago. They

1 don't have any source of income. And as a result
2 of development around them, they're no longer able
3 to maintain a subsistence way of lifestyle and so
4 they've gone to gold mining.

5 But the way they mine gold is
6 through the use of mercury. Mercury's a very
7 toxic element. It doesn't degrade. It doesn't
8 biodegrade. It's an element. It's just -- it's
9 there. It bioaccumulates up the food chain and
10 poisons everything along -- you know, along its
11 path. It causes birth defects, very severe birth
12 defects, at even very, very low quantities.
13 There's no safe level of mercury and yet these
14 people use it daily to separate gold from ore.

15 Basically, mercury's a very heavy,
16 dense material that's a liquid and you put -- you
17 grind up the ore, you throw it in the mercury, and
18 the gold will sink and everything else floats.
19 They take all the stuff that's floating and they
20 scoop it off and do it again. And at the end of
21 the day at the bottom of the barrel, there will be
22 some gold.

23 Well, there's also mercury on their
24 clothes. They bring that home and, you know,
25 their whole families end up with mercury

1 poisoning. Everything downstream of those areas
2 has mercury in it. Mercury permeates those
3 watersheds.

4 And so the machine that I
5 developed -- in talking with Douglas, he explained
6 this problem to me. The machine I developed
7 doesn't use mercury. And to -- advantageously, I
8 would say that mercury is about 60 percent
9 efficient at doing what it does, which means that
10 40 percent of the gold that goes into the tub of
11 mercury ends up coming out of the tub of mercury.
12 So it's lost.

13 I produced the mechanical separator.
14 It's called an helictical (phonetic) separator.
15 It's a class of machines. I produced an instance
16 of it. The communities that we were talking
17 about, they don't have roads into them. So you
18 can't just buy a machine and drag it there by a
19 semi-truck. It has to be disassembled, floated
20 down the river, walked up a trail and into the
21 Amazon rain forest.

22 (Reporter inquiry.)

23 THE DEFENDANT: Helictical
24 separator.

25 It's basically if you can imagine a

1 corkscrew inside of a tube. Right? And so the
2 way the machine works is that the corkscrew turns
3 and ore is ground up, added to water, and then
4 pushed down the tube. So you can imagine if the
5 tube was straight up and down, everything would
6 flow out the bottom. Right? If the tube was
7 horizontal, everything would precipitate out of
8 the water and into the -- into the bottom of the
9 tube.

10 So somewhere between here and there
11 is the point where only gold ore precipitates out.
12 As the gold precipitates out, it hits the screw,
13 and the screw is turning and it pushes it up the
14 tube and into a barrel. There's no chemicals
15 involved whatsoever. And this particular class of
16 separator has an efficiency of 85 to 90 percent,
17 and that depends on the angle that I clip the tube
18 at. So we have 60 percent with mercury and 80 to
19 90 percent with the mechanical separation that
20 I've designed.

21 I went to Douglas and I said, "Hey,
22 you know, here's what I can do. Why don't you go
23 to these communities and, say, 'We'll give you
24 10 percent above what you're making right now with
25 the mercury. You keep the rest of it. Right?"

1 And you produce and bring this machine to them."
2 And that way, the indigenous people do not get
3 poisoned, the watershed doesn't get poisoned. The
4 indigenous people make more money and the mining
5 company makes money. Everybody wins. There are
6 no losers in the equation. Again, it goes back to
7 my philosophy, which is good environmental
8 practices can also be good financial practices.

9 In conclusion, I -- the other part
10 of that is that Mr. McKinnon described to me a
11 problem which he is having. So that problem would
12 have been solved in Ecuador except for I needed to
13 do the hydraulic modeling, the computational fluid
14 dynamics to figure out the angles and the pump
15 rates. They're very complicated problems. There
16 are actually -- no computer capable of doing that
17 in Ecuador. As it turns out, I happened to have
18 one of those computers in my home in Russia for
19 some other work that I was doing.

20 And so I collected this data and I
21 go home to Russia and model the problem and send
22 an AutoCAD to a local machine shop which was going
23 to produce the machine. Unfortunately, I was -- I
24 ended up getting kidnapped in Cuba.

25 The other problem that was described

1 to me was one of a cyanide leach pond, and cyanide
2 leach ponds are the byproduct of industrial
3 mining. There are a number of them littered
4 around Ecuador. And basically the way it works in
5 industrial mining you take a bunch of ore, you
6 grind it all up, and you soak it with cyanide
7 water solution. The cyanide dissolves the gold
8 out of the dirt and then the liquid is recovered
9 and about 95 percent of the gold that's in
10 solution is pulled out.

11 During my time in Sheridan and
12 Inverness, I was able to contact a friend of mine
13 who works at the university in Indiana, and I had
14 him do some research or provide me with some
15 research that I was looking for, and I believe
16 that I developed an industrial process which makes
17 the mining company a lot of money and is based on
18 a biological process. It's biological in nature.
19 Well, it's a fairly complicated biological
20 process. But it -- for the end user, it's very
21 simple and it's very inexpensive and it makes -- I
22 would say the days of cyanide leach ponds are
23 numbered.

24 Mr. McKinnon was quite excited by my
25 discovery. My discovery's based in fact. It's

1 not some harebrain thing that I came up with.
2 It's based on numerous different pieces of data
3 from scientific journals that are peer reviewed,
4 and I'm very confident that that will become an
5 industrial process at some point. It has the
6 advantage of not only being cheap to do but
7 profitable for these mining companies to actually
8 clean up abandoned cyanide leach ponds.

9 Cyanide leach ponds are very
10 dangerous, particularly in the Amazon where it
11 rains a lot. The cyanide, when it's in solution,
12 stays in solution only when the pH of the liquid
13 is above 9.5. Rainwater is between 7 and 8.
14 So -- and, of course, in the Amazon it rains a
15 lot. Right? So these ponds are typically like
16 earthen dams and the liquid in the dam rises as
17 the rain comes down, of course, and the pH goes
18 down.

19 Now, the problem is is that when
20 cyanide -- the ion cyanide hits a pH of less than
21 9.5, it takes a proton from the water and produces
22 hydrogen cyanide, which is very toxic gas and for
23 which there is no antidote.

24 Additionally, occasionally you'll
25 hear, like even if you believe in Colorado where

1 these dams have been breached and they pour
2 cyanide into the watersheds and destroy everything
3 in their path. I believe the process that I've
4 developed resolves all of that.

5 So I would hope that in the event
6 that I get pretrial release of some form that I
7 could continue that research and finalize the
8 industrial process that I'm working on. So I
9 think that part of the reason -- or main reason
10 that I chose to share these -- these particular
11 projects is I wanted the Court to understand that
12 this person is not me. (Indicating.) You know,
13 this is who I am. This is what I believe. And a
14 lot of people say that, I'm sure, in court, but
15 I've actually spent a decade and a half proving
16 that. Thank you for your time.

17 THE COURT: Mr. Barrow.

18 MR. BARROW: Very briefly, your
19 Honor. It's clear that Mr. Dibee is someone that
20 could make contributions to our society, valuable
21 contributions, but he was not living in Russia and
22 Syria for business opportunities. He wasn't there
23 for the research opportunities that were afforded.
24 He clearly knew of the charges against him. He
25 was informed of those -- of the evidence that the

1 government had and he fled.

2 He undoubtedly knew that Russia and
3 Syria do not have an extradition treaty with the
4 United States. And repeatedly he was only willing
5 to come back to the United States if the
6 government dismissed the charges against him.

7 And, finally, he was not kidnapped
8 in Cuba. He was arrested on an arrest warrant out
9 of this district.

10 We'd ask that he remain detained
11 both as a danger to the community and a risk of
12 flight. Thank you.

13 MR. HOOD: Your Honor, just on the
14 last two points. You can understand how someone
15 traveling would -- with the treatment that he has
16 described in some small part in my memo would
17 describe the Cuban situation as kidnapping.

18 But also the -- I mean, and I talk
19 about this in the memo, the Syrian connection for
20 Joseph Dibee is that's his -- he had family there.
21 I mean, it's not that he's making some big plan
22 out of this. And there's nothing nefarious about
23 the Russian connection. It's all described in the
24 memo.

25 I think enough has been said on

1 this. I will not belabor the Court anymore except
2 to say that once you pierce the genre argument
3 about how serious the charges are and you start
4 looking at the sentences people actually got, the
5 fact that people got pretrial release, listening
6 to what Mr. Dibee has to say and the contributions
7 he can make, he is an extremely good candidate for
8 pretrial release supervision short of detention,
9 your Honor. Thank you.

10 THE COURT: I don't believe the
11 government's met its clear and convincing burden
12 in this instance and I'm going to release the
13 defendant under a constellation of obligations
14 that I believe will ensure that he will be present
15 for the next stages of his case, and I'm also
16 going to set as a matter of course regular status
17 conferences to move this case forward.

18 He was brought here in August of
19 2018, and it is now December of 2019, and this
20 case is yet to resolve or be set for trial. That
21 concerns me.

22 So I've read everything. I took a
23 look at the letter from his sister, and careful
24 what his sister wishes for. Your sister is highly
25 regarded. Her offer to have you stay in her home

1 and with her -- your brother-in-law and family is
2 significant to the Court. She has enormous ties
3 and a professional responsibility in that
4 community that's significant.

5 And what I'm going to tell you
6 straightaway is your -- what's most important is,
7 however this case resolves, trial or a change of
8 plea, I know every single one of the cases by
9 heart. I spent an entire summer doing sentencings
10 in these cases and I'm prepared to address when we
11 get to the stage if that should happen a number of
12 the issues. I know this case inside out. It
13 needs to be resolved. It needs to be finished.

14 And I'm going to count on you, on
15 the constellation of release conditions that I'll
16 put in place, that you are a different person, and
17 I have found that to be the case with a number of
18 the individuals who have come into court,
19 including -- I can name some who were released who
20 were in another country for some time and who
21 matured, shall we say. They're in their
22 intellectual -- a look at how they were going to
23 take on issues.

24 So I'm going to give you that
25 acknowledgment today that I think you are a

1 different person and you have enormous skills to
2 provide and can do that while you're on pretrial
3 release under these conditions.

4 And that you will appear, you will
5 cooperate with your lawyer to get this case
6 resolved, and hopefully move this case forward.

7 The easy thing for me to do would be
8 to hold you in custody, and that goes to credit
9 for whatever time you may be obligated to serve,
10 and so by being out it essentially means that that
11 time doesn't count. So the easy thing would have
12 been to hold you, but I believe under what my
13 obligation is that there's a -- the government
14 didn't, in my opinion, meet its burden, and there
15 has to be a constellation of obligations that you
16 must meet in order to stay in the community.

17 And I'm going to -- I'm going to
18 take you at your word that you will honor those
19 and you will comply and be in court. Yes, you're
20 facing time in custody, but you're also facing any
21 number of problems if you -- if you decide that
22 you are not going to comply with my order.
23 Because, again, I won't forget.

24 And what I tell people when I
25 release them when I do a change of plea or I

1 release them pending sentencing, that you -- this
2 is a very important period of time that a Court
3 looks at to see whether you can comply with the
4 orders. Do you understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: So all your
7 transportation, all your travel, passports, any --
8 anything that remains shall be turned over to the
9 government for their keeping.

10 You will be on house arrest. You
11 can have permission from pretrial to go to -- go
12 to the libraries or go if you need -- if you're
13 doing research, they'll have some limitations. If
14 you have appointments to meet, they will give you
15 some leeway.

16 You are to have an ankle bracelet so
17 we know where you are. You'll have a check-in
18 with your probation -- with the pretrial officer
19 on a regular basis. And to the extent that you
20 can -- you're not -- your attendance is not waived
21 for pretrial conference because you're not needed
22 here as we set some status conferences to move
23 this case along, you'll either be waived or you'll
24 need to be here.

25 Other conditions that you think

1 might be helpful?

2 MR. BARROW: Your Honor, we'd ask
3 that he have no contact with codefendants or
4 government witnesses.

5 THE COURT: No contact with the
6 codefendants in this case, and you know who they
7 are.

8 THE DEFENDANT: (Nods.)

9 THE COURT: Anything else?
10 Pretrial, anything else?

11 OFFICER RIOS: Your Honor, just a
12 couple of questions. Another condition of weapon
13 restrictions.

14 THE COURT: Of what?

15 OFFICER RIOS: No weapons or
16 firearms.

17 THE COURT: No weapons or firearms.

18 OFFICER RIOS: And is travel going
19 to be limited just to the western district of
20 Washington? Since his sister resides in --

21 THE COURT: He's to reside with his
22 sister. That was the request made. Reside with
23 his sister. And I'm sure you'll have courtesy
24 supervision from the Seattle office and they're --

25 OFFICER RIOS: That's correct.

1 THE COURT: I mean, I have any
2 number of folks who are out of that Seattle area
3 and were supervised in this manner out of Seattle,
4 so I'm sure that that will be done as a courtesy
5 to us.

6 Again, you put -- you've -- if you
7 are -- comply with this order, we move this case
8 forward and we're at sentencing, I will tell you
9 that will do a great deal in terms of how I look
10 at this case. And if you decide that you're going
11 to try to make a run for it, as we tell people,
12 we're pretty good at finding people so you don't
13 want to do that.

14 And I'm going to take you at your
15 word that you'll come back here because you're
16 back here now. How you got back here -- and I
17 read -- I've read the lengths of some of the
18 discussions that were there and I don't need to go
19 into that. There was some effort. But you're a
20 Syrian citizen. People travel the world. I
21 understand that. You knew there were charges.
22 You could have come back and dealt with them. I
23 know for a lot of people there were some
24 difficulties in having those discussions. But
25 you're here now and this is -- you're going to

1 face this and we're going to move through it and
2 resolve it one way or another.

3 And my pressure points will be on
4 the lawyers to move this case because it's been --
5 frankly, it's been on hold too long.

6 So I'd like to set a status
7 conference. Cathy, can you give us a date maybe
8 in the beginning of the year when I'm going to be
9 up here to see where we are?

10 COURTROOM DEPUTY: Status conference
11 is set for January 13, 2020, at 2:30 p.m.

12 THE COURT: I'd like -- again, can
13 you tell me any other conditions? Or I guess he
14 doesn't know -- I expect him to be around home. I
15 expect he'll have a computer, be able to work on
16 it. There will be -- I want to have a computer
17 provision in there that the probation or pretrial
18 will review if there's anything on the computer or
19 reason to believe you're communicating with
20 somebody that you shouldn't be communicating with
21 or -- you know, they'll have access to your
22 computer. But to be honest, I'm hopeful that you
23 will take this time and finish your projects.

24 THE DEFENDANT: Thank you.

25 THE COURT: Again, that's -- that's

1 the way in which -- when you look at sentencings:
2 Punishment, or I call it accountability,
3 rehabilitation, community safety, and other
4 factors that weigh in, that finishing the projects
5 that you're doing that -- over the last ten years
6 or so that you've changed what you're doing, that
7 will be important.

8 So I would -- I would hope that
9 that's how you would spend your time and let your
10 lawyers resolve the case and we'll be back here
11 and finish this up.

12 I appreciate what you had to say. I
13 listened very carefully. But I also listened very
14 carefully and read very carefully the reports from
15 both sides. So at this point you have a lot to --
16 you have some honor you need to meet with this
17 Court and with the government, and you've made, I
18 think, a really strong statement about a good
19 environmental practice should also be a good
20 economic practice.

21 I think you -- from everything I
22 read in these cases, that's a 180-degree turn from
23 how people started in this particular case and I
24 think you've figured out a contribution that you
25 can make for -- for the betterment of many number

1 of people and that will give you an opportunity to
2 do that and to resolve this case at the same time.

3 So don't abuse the -- the ability to
4 go make this difference right now and to meet the
5 obligations that I've put in place for you. All
6 right?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Is there anything else
9 you think we need?

10 OFFICER RIOS: One last thing we
11 need.

12 THE COURT: Sure.

13 OFFICER RIOS: Since location
14 monitoring is going to be installed, would your
15 Honor like the defendant to be rolled out for
16 Monday since he is at Columbia County or would you
17 like him released from Columbia County, go to
18 Seattle, and report to pretrial services?

19 THE COURT: I think we can have
20 him -- if there's people that can take him to
21 Seattle, go to Seattle and have the ankle bracelet
22 put on in Seattle.

23 OFFICER RIOS: He's at Columbia
24 County so he'd be released from Columbia County
25 and into Seattle.

1 THE COURT: Yep.

2 OFFICER RIOS: Okay. Thank you.

3 THE COURT: And will that -- I think
4 probably accommodates everybody's needs. And
5 he'll report -- he's to report directly to the
6 probation office, pretrial office in Seattle. Get
7 the ankle bracelet on. Give them all the
8 information so there's all the contact. It gives
9 you a few minutes, a little bit, to make an email
10 to Seattle to expect him and he should be in there
11 first thing Monday --

12 OFFICER RIOS: Thank you, Judge.

13 THE COURT: -- to get that
14 accomplished.

15 Is there anything else? Are we -- I
16 heard just a brief, when we met, just a brief
17 discussion about discovery. Are there discovery
18 issues? Is there something more I need to help
19 with today?

20 MR. BARROW: As I noted before, your
21 Honor, I'm not aware of any outstanding discovery,
22 your Honor. Mr. Hood and I will talk about them
23 and I'm sure we can get them resolved.

24 MR. HOOD: That's correct, your
25 Honor.

1 THE COURT: Okay. So please get
2 this on my calendar if I need to do something
3 before our next session. If not, I hope to hear
4 some progress at the next time we meet. All
5 right?

6 MR. HOOD: All right.

7 THE COURT: Anything else? All
8 right. We're in recess.

9 (The proceedings recessed at
10 4:14 p.m.)

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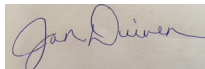
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3 CERTIFICATE
4

5 I hereby certify that the foregoing is a true
6 and correct transcript of the oral proceedings had
7 in the above-entitled matter, to the best of my
8 skill and ability, dated this 16th of December,
9 2019.

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15 JAN R. DUIVEN, CSR, FCRR, CRC

16 Certified Realtime Reporter
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